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Supreme Court of the United States

Nos. 297 and 298.
October Term, 1924.

MARIANNA MATTHEWS,
Plaintiff in Error,

(30144) *vs.*

LOUIS J. HUWE, as Treasurer of Hamilton County, Ohio.

MORTIMER MATTHEWS,
Plaintiff in Error,

(30145) *vs.*

LOUIS J. HUWE, as Treasurer of Hamilton County, Ohio.

In Error to the Court of Appeals for the First Judicial District of the State of Ohio.

Reply Brief for Plaintiffs in Error.

MORTIMER MATTHEWS,
Counsel for Marianna Matthews, Plaintiff in Error and Pro se.

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The defendant's so called Argument on the Merits (Defendant's Brief 6) is not an argument on the merits at all, as presented by us, under the heads II Distance of Access, and III, Value, in our brief, pages 20 and 27. It is rather an argument that there was no

jurisdiction in the court below as a court of equity to hear the merits of the questions, because the plaintiff did not file objections before the county commissioners as an equalizing board under Section 1214.

We think the argument was sufficiently answered at pages 19-20 of our original brief; but beg leave to reply a little more in detail with citation of further authorities.

Under title X entitled "Counties," chapter 6 entitled "County Surveyor," Sections 2782-2822, of the Ohio General Code, the county surveyor is an independent county officer, elected by the people, giving bond, and taking an oath for the performance of his duties, including those imposed upon him by Section 1214. It is *he* who, under the terms of that section, is to make the "*tentative apportionment*" (not estimated assessment), and not the commissioners, who are only to cause him to do so. It is he who has inherent power to adopt proper rules to make his action equal and uniform, and not they.

Miami Conserv. District v. *Ryan*, 104 Ohio St., 79, 87.

It is not until he has made this tentative apportionment upon his own independent investigation and judgment, "according to the benefits accruing to the lands so located," and pursuant to rules independently adopted by himself, and not dictated by them, and has filed *such* "tentative apportionment" with the commissioners, and has so certified his action to them, that the commissioners are given authority to publish notice that "*such* estimated assessment is on file," and in the absence of just objections, to adopt the assessment

and to approve and confirm the same. When therefore the commissioners, as in this case, formulated beforehand certain specific rules of assessment, whether sufficient to cover the various tracts of land in the assessment area in their various relations to the improvement affecting benefits, or not, and this, not as suggestions merely, as claimed by the other side, but as the sum total of their act, by which under the statute, they were supposedly causing him to make the tentative apportionment, and were "directing" his action, it is quite apparent that they did not cause *him* to make any apportionment at all according to benefits, but had done that themselves, as they supposed, according to their own uninformed judgment; and merely "directed" him to perform the clerical work and arithmetical calculation, necessary to its extension into the several assessments upon the separate tracts of land within the assessment area. Their "direction" that he should do this "by actual view," was not for the purpose of aiding *his* investigation of, and independent valuation of the different varieties and degrees of benefits concerned, but only for the purpose of securing accuracy in his clerical and arithmetical extension to the various tracts of the so-called valuations of the benefits already determined by them. As there is no legal presumption, as claimed by the other side, that he being an independent officer of the county, and presumably knowing what the law and his duties required of him, treated their "directions," as mere suggestions, and either followed or disregarded them, in accordance with his own independent judgment; and as there is no room for the indulgence of any such presumption, because of his report and their finding, that the "estimated assess-

ments" had been made in accordance with *their* valuation of benefits, and not *his,* and because this is confirmed by the assessment roll itself, the publication of notice, such as it was, and the plaintiffs' failure to object, did not prevent the bringing of this suit under Section 12075 Ohio General Code on these constitutional grounds.

That this is the meaning of the statute, and the effect to be given such violations of its terms, and that no such legal presumption may be indulged, are supported by the principles laid down in the authorities, in slightly variant form, as follows:

(a) *Mann* v. *Jersey City,* 24 N. J. L., 662, 665-6-7-8.
Sinclaire v. *West Hoboken,* 58 N. J. L., 129, 130-1.
R. R. v. *Jersey City,* 81 N. J. L., 290, 296, 297.
Steckert v. *East Saginaw,* 22 Mich., 104, 114.
Alvord v. *Syracuse,* 27 Misc. (N. Y.), 392.

(b) *Kellog* v. *Griffiths,* 124 App. Div. (N. Y.), 515.
Boyleston Mkt. Ass. v. *Boston,* 113 Mass., 528 (530-1).
Somerville v. *Dickerman,* 127 Mass., 272, 274, 275.

(c) *McConnell's Mill Road,* 32 Pa. St., 285, 286-7.
Catherine Township Road, 76 Pa. St., 189, 191.
Otter Creek Road, 104 Pa. St., 261, 263.
Sadsbury Tp. Road, 147 Pa. St., 471, 474.

(d) *Allen* v. *Cleveland,* 1 Cleve., 2.
Maple Heights v. *Holtz,* 100 O. S., 264, 5, 6, 7.
Glenn v. *Waddell,* 23 O. S., 605, 607-8, 609.
Hill v. *Cleveland,* 2 Cleve. L. R., 385, 6, 7.
Chamberlain v. *Cleveland,* 34 O. S., 551, 556-7.

(e) *Warren* v. *Grand Haven*, 30 Mich., 24.
State v. *Hudson*, 27 N. J. L., 314.
State v. *Jersey City*, 28 N. J. L., 500.

Finally, the raising of the question here is precluded by the action of the court below, as said at pages 19-20 of our original brief.

Respectfully submitted,

MORTIMER MATTHEWS,
Counsel for Marianna Matthews,
Plaintiff in Error and *Pro se.*